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 SUMMIT DESIGN, INC.
 7 and CHARLES HALE

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 EMIL GIRCZYC,
 12
 13 Plaintiff,

14 v.

15 SUMMIT DESIGN, INC. a corporation,
 CHARLES HALE, an individual, DOE
 16 ONE through DOE FIFTY, inclusive,
 17 Defendants.

CASE NO. C 07-03372 JW

**JOINT CASE MANAGEMENT
 STATEMENT AND [PROPOSED] ORDER**

Date: October 1, 2007
 Time: 2:00 P.M.
 Courtroom: 5
 Judge: Honorable James Ware

19 The parties to the above-entitled action jointly submit this Joint Case Management
 20 Statement and Proposed Order pursuant to Federal Rule of Civil Procedure 26(f) and the Northern
 21 District Standing Order, and request that the Court adopt it as its Case Management Order in this
 22 case.

23 **1. Jurisdiction and Service**

24 The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and 1441(a) and
 25 (b). Assignment to the San Jose Division is proper because the state action filed by Plaintiff was
 26 pending in the Superior court of Santa Clara County. Plaintiff has served all named defendants in
 27 this matter.

1 **2. Overview of Facts**

2 Plaintiff, Emil Girczyc, a California resident, was hired by Summit Design, Inc.
3 ("Summit") on December 1, 2004 as President and Chief Executive Officer of Summit. Summit
4 is a Delaware corporation with its United States headquarters in the Commonwealth of
5 Massachusetts. Defendant Charles Hale is Chairman of the Board of Summit and a resident of
6 the State of New York.

7 On April 18, 2007, Plaintiff filed a complaint in Santa Clara County Superior Court
8 alleging the following claims against Defendant Summit: (1) breach of contract; (2) "bad faith"
9 breach of the implied covenant of good faith and fair dealing; (3) violation of California Labor
10 Code sections 201, 202, 203 and 216; and (4) anticipatory breach of written contract.
11 Additionally, Plaintiff alleged violation of California Labor Code section 216 against Defendant
12 Charles Hale. Defendants answered the complaint, denying its material allegations and raising
13 various affirmative defenses. Thereafter, Defendants removed the case to this Court based on
14 diversity of citizenship, pursuant to 28 U.S.C. sections 1332 and 1441(a) and (b).

15 The principal factual allegations in dispute include: (1) whether Plaintiff's employment
16 was terminated by Summit; (2) whether Summit had cause to terminate Plaintiff's employment;
17 (3) whether Plaintiff resigned; (4) whether Plaintiff's position was eliminated; (5) the nature of
18 Plaintiff's duties and his performance thereof; (6) whether Plaintiff is entitled to any severance
19 pay, bonus money, vesting of stock options or continued health benefits, and if so, how much; (7)
20 whether Plaintiff failed to follow the legal directives of the Board of Directors; (8) whether
21 Summit repudiated the retention bonus agreement as alleged; (9) whether Plaintiff was owed any
22 wages when he ceased working for Summit; and, (10) whether Summit is entitled to an offset for
23 sums owed to Summit by Plaintiff, and if so, how much.

24 **3. Legal Issues**

25 The principal legal issues in dispute include: (1) whether Plaintiff's allegations suffice to
26 state any viable claim against Defendants or either of them; (2) whether there was a breach of
27 Plaintiff's employment agreement; (3) whether there was a breach of the implied covenant of
28 good faith and fair dealing; (4) whether the payments and benefits claimed by Plaintiff constitute

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1 wages within the meaning of California Labor Code Sections 201, 202, 203 and 216; (5) whether
2 California Labor Code Section 216 provides Plaintiff with a private right of action; (6) whether
3 Plaintiff is entitled to any compensatory, punitive damages or statutory penalties; (7) whether, if
4 any failure to pay wages occurred, such failure was willful. *See* Cal. Admin. Code tit. 8, § 13520;
5 and, (8) whether Plaintiff has stated any facts or claim giving rise to the right to seek punitive
6 damages.

7 **4. Motions**

8 No motions have been brought or are pending at this time. Plaintiff and Defendants each
9 anticipate bringing a motion for summary judgment.

10 **5. Amendment of Pleadings**

11 No amendments are anticipated at this time. The parties propose a deadline of May 15,
12 2008 for amending the pleadings.

13 **6. Evidence Preservation**

14 The parties agree to preserve all evidence relevant to the issues reasonably evident in this
15 action, including, but not limited to, such writings and recordings as defined by Federal Rule of
16 Evidence 1001(1). Defendants have requested the preservation and return of electronic files and
17 equipment retained by Plaintiff that may contain relevant evidence.

18 **7. Disclosures**

19 The parties' initial disclosures will be made concurrently with the filing of this Joint
20 Statement. The parties have met and conferred regarding their Federal Rule of Civil Procedure
21 26 disclosure and discovery obligations.

22 **8. Discovery**

23 Discovery has not yet commenced. The parties anticipate taking depositions and
24 exchanging written discovery requests. The parties have met and conferred regarding their
25 Federal Rule of Civil Procedure 26 disclosure and discovery obligations. The parties have agreed
26 upon a limit of seven depositions per side. The parties do not request any other modifications to
27 the discovery rules at this time. Proposed dates concerning discovery are included in the
28 scheduling section below.

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1 **9. Class Actions**

2 This action is not a class action.

3 **10. Related Cases**

4 At this time there are no known related cases or proceedings.

5 **11. Relief**

6 Plaintiff's complaint requests compensatory, general and special damages, punitive
7 damages, statutory penalties, attorneys' fees and interest. In the event Plaintiff is awarded any
8 amount in this action, Defendant Summit seeks an offset for sums owed to Summit by Plaintiff.
9 Defendants also seek their attorneys' fees and costs under Labor Code section 218.5.

10 **12. Settlement and ADR**

11 The parties have agreed to attend a settlement conference with a magistrate judge. The
12 parties anticipate that the settlement conference will occur within 120 days of the entry of the
13 Case Management Order.

14 **13. Consent to Magistrate Judge for all Purposes**

15 The parties have not consented to a magistrate judge for all purposes, and, accordingly,
16 the case has been re-assigned to a United States District Judge. However, the parties do consent
17 to having a magistrate judge conduct any proceedings regarding discovery or disclosure, as
18 provided in the Court's Standing Order Regarding Case Management in Civil Cases.

19 **14. Other References**

20 The parties do not believe that other references are necessary at this time.

21 **15. Narrowing of Issues**

22 The parties will consider potential means of narrowing the issues after further
23 development of the case.

24 **16. Expedited Schedule**

25 The parties do not at this time foresee a need for an expedited schedule.

26 **17. Scheduling**

27 The parties propose the following dates:

28 Regular Discovery Cutoff

April 30, 2008

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Expert Disclosure Deadline May 30, 2008
 Expert Discovery Cutoff June 30, 2008
 Deadline for hearing dispositive motions July 14, 2008
 Pre-Trial Conference Date July 28, 2008
 Trial Date August 25, 2008

18. Trial

Plaintiff has requested a jury trial. The parties anticipated a trial length of five days.

19. Disclosure of Non-Party Interested Entities or Persons

In their Notice of Removal, Defendants made a certification pursuant to Civil Local Rule 3-16 that Defendants had no interest identified in Civil Local Rule 3-16 to report. Plaintiff certifies that he has no interest identified in Civil Local Rule 3-16 to report.

Dated: September 25, 2007

DLA PIPER US LLP

By

HOPE ANNE CASE
 Attorneys for Defendants
 SUMMIT DESIGN, INC. and
 CHARLES HALE

Dated: September 25, 2007

LAW OFFICES OF RANDALL M. WIDMANN

By

RANDALL M. WIDMANN
 Attorneys for Plaintiff
 EMIL GIRCZYK

CASE MANAGEMENT ORDER

The Case Management Statement is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

DATED: _____

THE HONORABLE JAMES WARE
 United States District Court Judge

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